Court No.3

Criminal Revision No. 45 of 2001
(Old No. 1154/1987)

Vishwanath .....Revisionist.

Versus

Prem Dutta .....Respondent.

Hon'ble Irshad Hussain, J.

This is a criminal revision under section 497/401 of the Criminal Procedure Code (hereinafter referred to as "Code") against the judgment and order dated 23-7-1987 passed by the Additional District and Sessions Judge Dehradun in criminal revision No. 84/86 arising out of case No. 2 of 1986 under sections 145/146 of the "Code", whereby the revision preferred by the respondent No.1 against the order of the learned Magistrate passed on 11.7.1986 was allowed and the case was remanded to the learned Magistrate to decide the same keeping in view the observations made in the said judgment and giving a further direction to the learned Magistrate to give the property in question in the Supurdagi of Sri Maheshwari Prasad Painoli, who was duly appointed Supurdar for the purpose.

None appeared for the revisionist-respondent No.1 Heard Sri G.S.Sandhu A.G.A. are carefully perused the record in the light of legal aspects of the case.

It is to be mentioned at the out-set that the delivery of the possession of the property in question to the Supurdar was made on 12.4.1099 by the Magistrate concerned. The need to remand to case for disposal according to learned Sessions Judge arose on account of the fact that no proper opportunity to adduce the evidence in the case to the first party was afforded by the learned Magistrate and he was thereby deprived of contesting the case and also to put forward his claim in regard to the property in question. The order of the learned Magistrate in fact was based on the evidence of only the second party which clearly indicate that basic principles of adversial litigation was ignored, in the sense that one of the contesting party has had no opportunity to adduce his evidence in support of his stand. Considering this the judgment and order of the learned Sessions Judge does not suffer from vide of impropriety and

illegality and therefore there are no cogent and legal grounds to interfere with it.

In view of above the revision being devoid of merit is hereby dismissed. The stay order dated 30-7-1987 is vacated.

(Irshad Hussain, J.)

Dated: 1-9-2003

ISB